



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No.: | **10471-2004**

In the matter between:

ZAID SEEDAT

Plaintiff

and

THE MINISTER OF CORRECTIONAL SERVICES

Defendant

Coram: Montzinger AJ

Heard: 25 – 26 February, 24 March 2026

Delivered: 25 June 2026

Summary: Action for damages - The quantum of the damages claim for general damages settled – dispute about pre-judgment mora interest – the provisions of the Prescribed Rates of Interest Act 55 of 1975 and their application under consideration – Exercising of discretion in terms of section 2A(5) of the Prescribed Rate of Interest Act to determine whether interest is payable, the period involved and the rate at which interest is to be charged.

ORDER

1. The defendant shall pay to the plaintiff pre-judgment mora interest on the amount of R350,000.00 at the rate of 15.5% per annum, calculated from 11 December

2012 to 2 March 2026, in the amount of R717,734.93 (seven hundred and seventeen thousand seven hundred and thirty-four rand and ninety-three cents).

2. The total judgment debt is accordingly the sum of R1,067,734.93 (one million sixty-seven thousand seven hundred and thirty-four rand and ninety-three cents).
3. The amount of R1,067,734.93 shall bear interest at the rate of 10.25% per annum from the date of this order to the date of payment.
4. The defendant shall pay the plaintiff's costs of the quantum trial on the party-and-party scale, scale B.
5. Each party shall bear its own costs of the interlocutory and postponement applications after 14 May 2025.

JUDGMENT

Montzinger AJ

Introduction

- [1] This judgment concerns pre- and post-judgment interest on the amount of damages in an action that was instituted as long ago as 2004. The plaintiff instituted action against the Minister of Correctional Services (the "Minister"), arising from the plaintiff's contraction of tuberculosis while detained at Pollsmoor Prison.
- [2] After 21 years the parties finally agreed that the Minister was 100% negligent and liable for the plaintiff's damages to be proven. That agreement was embodied in an order granted by Erasmus J on 26 May 2025. The matter came before me set down as a trial to lead evidence to proof the plaintiff's damages.

- [3] On the first day of the trial various interlocutory issues have arisen. In light of the interlocutory issues the parties sought a postponement and for the matter to be re-enrolled on the pre-trial roll to be case managed in order to resolve those interlocutory disputes. I was however not inclined to allow the matter to enter the pre-trial process again in circumstances where the plaintiff has had to endure the finalisation of his action for more than 20 years. I rather stood the matter down with directions regulating the further conduct of the matter and scheduled a hearing date to at least dispose of the interlocutory issues.
- [4] Subsequent, to the matter standing down the parties managed to agree on a number of issues. The plaintiff abandoned his claim in respect of all other heads of damages except for general damages. The parties agreed on the quantum in the amount of R350,000.00 for general damages. Various of the interlocutory skirmishes also became redundant as the parties resolved them by agreement. As a result, only the interest issue remained outstanding.
- [5] No oral evidence was led in respect of the interest issue. Ultimately, the issue is one of law having regard to the undisputed facts as they appear from the record. Mr Abrahams for the plaintiff and Ms Pillay, for the Minister, both filed comprehensive written submissions, which was of great assistance to the court. I start by setting out the context and procedural history of the matter.

Relevant context and procedural history

- [6] The plaintiff, Mr Zaid Seedat, was imprisoned between approximately 15 June 2000 and 30 August 2003 in Pollsmoor Prison as an awaiting trial prisoner. While in custody he had numerous court appearances. The criminal proceedings against him

eventually culminated with him being convicted and given a suspended sentence and a fine. For most of his imprisonment he was held in the Hospital Section of Pollsmoor Prison, occupying a single cell, with frequent visits to a 12-person communal hospital cell.

[7] However, the plaintiff's incarceration resulted in him contracting and being diagnosed with pulmonary Tuberculosis ("TB") in late November 2001, approximately 17 months after being imprisoned.

[8] Alleging that the Minister was responsible for him contracting TB while he was in prison at Pollsmoor, the plaintiff, in December 2004, issued summons against the Minister for delictual damages. The plaintiff initially claimed damages in the amount of R849,000.00, delineated as R1,000.00 for past hospital and medical expenses; R100,000.00 for future estimated medical expenses, R648,000.00 for loss of earnings and R100,000.00 in general damages.

[9] After pleadings closed, the matter entered a period of inactivity. This was in the main because of a similar action having been instituted by a Mr Dudley Lee against the same Minister (the "Lee action") arising from his contraction of TB, also at Pollsmoor prison. It therefore made sense for the plaintiff's action to await the outcome of the Lee action. The Lee action was first litigated in this Division where Davis J found in Mr Lee's favour on liability¹, and then through the Supreme Court of Appeal, which overturned that finding on the issue of causation².

[10] The Lee action concluded on 11 December 2012 in the Constitutional Court when that court granted Mr Lee leave to appeal the Supreme Court of Appeal's judgment.

¹ *Lee v Minister of Correctional Services* 2011 (6) SA 564 (WCC)

² *Minister of Correctional Services v Lee* 2012 (3) SA 617 (SCA)

The Constitutional Court held that the responsible authorities' failure to maintain an adequate system for the management of TB constituted negligence, and that the common law of causation required development in accordance with the spirit, purport and objects of the Bill of Rights to accommodate claims of that nature. The Constitutional Court thus resolved the legal principle upon which the viability of the plaintiff's claim in the present matter depended.

[11] Post the Constitutional Court judgment in the Lee action the plaintiff's action still did not progress with any haste. On 14 May 2014, two years post the outcome of the Lee action, the parties agreed to a separation of the quantum and damages. Thereafter, the action again entered a period of inaction. Another ten years later on 14 June 2024 Magardie AJ made an order recording the parties' settlement of the quantum for the plaintiff's damages in the amount R300,000.00. Unfortunately, that did not give finality to the matter as that order was subsequently rescinded by Acting Justice Fagan on 21 November 2024. There are no reasons for that rescission order.

[12] On 14 May 2025, the parties concluded a Rule 37A agreement and a Certificate of Trial Readiness was issued and on 21 May 2025, Erasmus J certified the matter trial-ready. A week later on 26 May 2025, Erasmus J issued an order, by agreement, where the parties again settled the merits 100% in favour of the plaintiff and that the Minister would be liable for the amount of damages to be proven. The matter was allocated a trial date from 25 – 26 February 2026, to lead evidence on damages.

[13] In anticipation of the trial, the plaintiff filed a new expert report by Dr Chapman on 11 November 2025. On 12 November 2025 the plaintiff also served a Rule 28(4) notice seeking to amend the quantum of its general damages claim from

R100,000.00 to R500,000.00. The defendant filed a notice of objection, to that amendment on 27 November 2025. Then a flurry of activity ensued as there followed a series of interlocutory applications and procedural disputes during January and February 2026. This included Rule 35(3) and Rule 30A notices by the Minister, and a Rule 38(2) application by the plaintiff, and ultimately the Minister's application for a postponement of the trial set down before me on 25 – 26 February 2026.

- [14] As mentioned, at the start of the trial on 25 February 2026 the events I described in the introductory paragraphs of this judgment unfolded. In order to tidy up the pleadings, on 12 March 2026, the plaintiff filed amended particulars of claim reflecting the agreed quantum amount for general damages of R350,000.00. The parties then filed heads of argument on the outstanding interest and costs issues.
- [15] Therefore, the only outstanding issues in respect of the main claim that required determination are as follows. Firstly, whether the plaintiff is entitled to pre-judgment mora interest on the agreed capital general damages amount of R350,00.00. Secondly, whether the plaintiff is entitled to post-judgment interest. Thirdly, if the plaintiff is entitled to pre-judgment mora interest, from what date, at what rate, and whether the *duplum rule* applies if the interest amount exceeds the capital. Fourth, the appropriate costs order in respect of the interest issue; and lastly an appropriate costs order in respect of the various interlocutory proceedings and postponement application that preceded the settlement.

Pre-judgment mora interest

[16] This section of the judgment set out the respective arguments on behalf of the parties how the court should apply the prevailing legal position to the question of whether the plaintiff is entitled to pre-judgment *mora* interest in respect of this matter.

The plaintiff's case on pre-judgment mora interest

[17] It was argued on behalf of the plaintiff that since the claim is for an unliquidated debt, within the meaning of section 2A(1) of the Prescribed Rate of Interest Act 55 of 1975 (the "PRIA") the capital damages amount shall bear interest as contemplated in section 1 of PRIA and that the interest shall run from date of service upon the debtor of demand or summons, whichever is the earlier³. Therefore, so it was argued, since the date of service of summons is 9 December 2004, at the prescribed rate then applicable at the time, being 15.5% per annum⁴, it means that the pre-judgment interest on the capital amount of R350,000,00 is R1,151,883.56⁵ and the total judgment amount should be consolidated and amount to R1,501 883,56.

[18] Relying on *Da Cruz*⁶ it was also argued that the consolidated judgment amount attracts interest afresh from the date of judgment at the prescribed rate of 10,25% in operation at the time of judgment.

³ section 2A(2)(a) of PRIA

⁴ The rate of interest being 15,5% remaining constant from the date interest begins to run in accordance with the judgment of *Davehill (Pty) Ltd v Community Development Board* 133 1988 (1) SA 290 AD

⁵ This is calculated to the earlier date of 27 February 2026 when the general damages were settled according to the Plaintiff

⁶ *Da Da Cruz v Bernardo* 2022 2022 (2) (2) SA SA 185 185 (GJ) (GJ) at para 57.2

[19] Furthermore, on the issue of whether the plaintiff's calculation of pre-judgment mora interest offends the *in duplum* rule Mr Abrahams argued that the rule does not apply to pre-judgment interest as pre-judgment interest will not be arrear interest. Reliance for this proposition was placed on the Supreme Court of Appeal and Constitutional Court judgments in *Drake Flemmer*⁷ and *Slipknot*⁸, that the *in duplum* rule only applies to arrear interest. The aforementioned approach was followed by *Bischoff*⁹ in this division a judgment by Pangarkar J where she did a careful analysis of the legal position to conclude that where interest had not accrued prior to judgment it was not due and therefore could not be arrear interest.

[20] It was also argued that the court should exercise its discretion to award pre-judgment mora interest in terms of s 2A(5) of PRIA. It was not clear whether this argument was in the alternative to the main arguments that I have set out or as a self-standing ground for pre-judgment mora interest arriving at the same result. I will treat it as a self-standing basis to award interest, as that is the only approach that makes sense.

The defendant's case on pre-judgment mora interest

[21] The Minister's argument, presented by Ms Pillay, certainly appears to have an aura of complexity. Ms Pillay advanced a few interconnecting arguments in respect of its objection to the plaintiff's pre-judgment mora interest claim. I decided to categorise these arguments in three distinct sections. They are the interpretation of section 2A of PRIA argument, the general application of section 2A of PRIA

⁷ *Drake Flemmer & Orsmond Inc v Gajjar* 2018 (3) SA 353 (SCA) at para 84

⁸ *Paulsen v Slipknot* 2015 (3) SA 479 (CC)

⁹ *Passenger Rail Agency of South Africa v Bisschoff N.O obo Reyners* 2024] [2024] ZA ZAWCHC WCHC 207

argument, and lastly the discretion to award interest in terms of section 2A(5) of PRIA.

The interpretation argument

[21.1] In terms of this categorisation of the argument the Minister aims to establish parity between interest claims in personal injury claims against organ of state defendants in general under section 2A of PRIA and interest claims for personal injury claimants against the Road Accident Fund, who is also the state. The argument proceeds along the lines that section 2A of PRIA, must be interpreted to read the same as section 17(3)(a) of the Road Accident Fund Act, 56 of 1996 (the “RAF Act”) to ensure that the assessment of personal injury damages claims against non-RAF organs of state be deemed to be determined at date of trial and accordingly, restrained from accruing *mora* interest until date of judgment.

The application of the provisions of section 2A of PRIA in general

[21.2] Under this categorisation of the argument the Minister relies on various propositions why pre-judgment *mora* interest should not be levied.

[21.3] First, it is argued that general damages for pain and suffering are not a '*monetary debt*' that existed as at the date of summons, but rather a non-economic loss that is only '*converted into monetary values*' at the date of settlement of the claim, being 2 March 2026. Therefore, the claim for general damages constitutes '*future loss*' as envisaged by section 2A(3) of PRIA, with interest running only from the date of judgment, or in this case

date of settlement. Reliance is placed on judgements like *Van der Merwe*¹⁰, *Hartley*¹¹ for the proposition that general damages are not a 'monetary debt' that comes into existence at a fixed amount on the date of the delict. Consequently, so the argument goes, mora interest on general damages should only accrue from date of judgment.

[21.4] Secondly, it was argued on behalf of the Minister that the qualification and definition of "demand" in section 4(ii) of PRJA is an important regulatory feature which places an obligation on a claimant to set out his or her claim in such manner that the debtor may reasonably assess the quantum thereof at the date of demand so that the general damages could '*reasonably be assessed*' at the date of demand or summons. In this case it is argued that the plaintiff's claim was not set out in such a manner to enable the Minister to assess the claim for general damages on 9 December 2004 within the meaning of section 2A(2)(a) of PRJA. Consequently, the amount was only quantified over twenty-one years later and entitlement to pre-judgment mora interest therefore does not arise.

[21.5] Thirdly, it was argued, relying on various authorities, that if interest is to run from date of summons, the capital amount must be reduced to its value at the date from which interest accrues. Therefore, the general damages amount of R350,000.00 would have to be reduced or discounted back to a 2004 nominal currency value in accordance with prior inflation or CPI rates in order to obtain the nominal rate in 2004. Interest should be

¹⁰ *Van der Merwe v Road Accident Fund* 2006 (4) SA 230 (CC)

¹¹ *Hartley v Pyramid Freight (Pty) Ltd* 1990 (4) SA 833 (AD)

calculated on that capital amount. If this proposition is upheld the Minister also argued that since the plaintiff failed to tender any evidence or actuarial report on how this exercise should be done the plaintiff's claim for *mora* interest should be dismissed on this basis.

[21.6] Fourth, the Minister argues that the court's discretion in terms of section 2A(5) of the PRIA should be invoked in its favour relying on various factors. However, relying on the judgment in *Adel*¹² the argument has an extra leg. It is argued that the discretion should override the provisions of section 2A of PRIA. It is argued that applying section 2A in the manner which the plaintiff wishes for the court to apply it would lead to an unjust result and therefore, the court should rather resolve the issue of *mora* interest by exercising its discretion and should be based on the Minister's calculations.

[22] All the arguments raised by the Minister unnecessarily complicated the interest issue and the court's evaluation thereof. I first provide an overview of PRIA and thereafter I start off by evaluating the argument that there should be parity between the Road Accident Fund Act and PRIA.

The legislative framework for pre-judgment more interest

[23] Section 2A¹³ of the PRIA governs interest on unliquidated debts. Section 2A(1) provides that every unliquidated debt, as determined by a court or by agreement between the parties, shall bear interest at the prescribed rate¹⁴. Section 2A(2)(a)

¹² *Adel Builders (Pty) Ltd v Thompson* 1999 (1) SA 680 (SE) at 692 E – I.

¹³ Introduced by the Prescribed Rate of Interest Amendment Act 7 of 1997 with effect from 11 April 1997

¹⁴ The current prescribed rate is 10.25%

provides that such interest shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is the earlier. However, the subsection is subject to where the parties have an agreement that regulates when interest starts to run or where the provisions of the National Credit Act, 2005 applies.

[24] Section 2A(3) creates an exception for '*future loss*': where the debt or any part thereof represents the present value of a future loss, interest only commence to run from the date of judgment, an arbitration award or the parties' agreement. Section 2A(4) regulates the interruption of the running of interest where payment is made into court as an offer of settlement and the amount awarded by the court does not exceed the amount paid into court.

[25] Section 2A(5) in turn confers a discretion on the court or an arbitrator or arbitration panel, subject to certain caveats, to make such order as to it appears just in respect of interest on an unliquidated debt, including an order as to the rate at which interest shall accrue and the date from which interest shall run. The caveat that limits the exercise of the discretion is where there is another law or an agreement between the parties.

[26] Section 2A(6) provides that section 2(2) applies *mutatis mutandis* to interest recoverable under section 2A. The effect of section 2(2), when applied, is that any interest payable may be recovered as if it formed part of the judgment debt on which it is due.

[27] In the recent judgment of *RAF v Stoffels*¹⁵ the Supreme Court of Appeal was concerned with the issue of the RAF's liability to pay post judgment interest where the judgment awarding damages were silent on interest. The RAF argued that since section 17(3)(a) of the RAF Act provides that post judgment interest accrues from 14 days after judgment on awards of unliquidated damages against the RAF and since that section is quiet on the rate and the date from which interest start to run, that section 2A(5) of PRIA serves as the gateway to determine post judgment interest.

The Road Accident parity argument

[28] It is convenient to start with this point as it will dispose of the pre-judgment mora interest issue if I find that there is merit in it.

[29] Subsection 17(3)(a) of the RAF Act provides that a claimant against the RAF is entitled to interest only from fourteen days after the date of a final court order. The Minister argued that because both the Minister and the RAF are organs of state, there is no rational basis for differentiating between them, and that the principle of restraint against the fiscus supports extending the RAF Act's limitation on interest to the present claim.

[30] In support of this analogy, the defendant invokes equality before the law¹⁶ and the principle in *IIE v KZN Law Society*¹⁷ that statutes dealing with the same subject

¹⁵ *Road Accident Fund v Sheriff of the High Court, Pretoria East and Others and Road Accident Fund v Stoffels and Another* (268/2025 ; 1182/2024) [2026] ZASCA 37 (24 March 2026). I was not referred to this judgment during argument as it was handed down on the day the matter argued before me.

¹⁶ section 9(1) of the Constitution

¹⁷ 2020 (2) SA 325 (CC)

matter or which are in *pari materia* should be construed together and harmoniously. The defendant relies on *Vermaak*¹⁸ and *Kwezi*¹⁹.

[31] In *Vermaak* the court held that section 2A of PRIA cannot be reconciled with section 17(3)(a) of the RAF Act as it overrides section 2A of PRIA. In *Kwezi* reliance was placed on *Vermaak* to conclude that section 2A of PRIA commenced on 05 April 1997 whilst section 17(3)(a) of the RAF Act remains unchanged at commencement on 01 May 1997 which meant that the legislature did not intend to remove the restriction in section 17(3)(a) of the RAF Act although it would have been cognisant of section 2A of PRIA prior to enacting the former section.

[32] Consequently it is argued by the Minister that in view of the timing of the enactments of the sections, with section 17(3)(a) of the RAF Act being enacted one month after section 2A of PRIA, that personal injury claims against non-RAF organs of state, which fall out of purview of the RAF Act, should be interpreted in accordance with the limitations interred in section 17(3)(a) of the RAF Act. The argument stretched further to make the point that in view of the canons of interpretation as stated in *IIE v KZN Law Society* this Court should find that since section 2A of PRIA and section 17(3)(a) of the RAF Act are in *pari materia* regarding the application of mora interest on personal injury claims, these sections should be construed together.

[33] There are some obvious difficulties with the argument and considering the approach I take in dismissing the argument it is not necessary to delve into an expansive exposition for why the argument, in substance, has great difficulty. In respect of the

¹⁸ *Vermaak v Road Accident Fund* 2008 JDR 0249

¹⁹ *Kwezi obo Kwezi v Road Accident Fund* [2011] ZAWCHC 455

substantiveness of the argument it suffices to find that neither *Vermaak* or *Kwezi* assist the Minister as in *Vermaak* it was found that the provisions of subsection 17(3)(a) bar the payment of interest claimed by a plaintiff in terms of Section 2A and that the two provisions are irreconcilable. Also, in answering the question as to which statute should prevail the court in *Vermaak* in response to the request to apply the principle of statutory interpretation that a later statute, the PRIA Act, prevails over an earlier one, the RAF Act, the court came to the conclusion that the canons of interpretation can only be applied where the two statutes are *in pari materia* or is concerned with a similar subject, which the court held was not the case as far as the two statutes are concerned.

[34] *Vermaak* and *Kwezi* on the facts concerned an attempt by plaintiffs to obtain an order that they have an entitlement to pre-judgment mora interest in terms of PRIA and that subsection 17(3)(a) of the RAF Act should be interpreted to read the same as PRIA to support their entitlement to pre-judgment mora interest. The arguments raised by the Minister in this case is to rely on those judgments to turn the argument the other way to contend that pre-judgment interest on an unliquidated claim should rather be read with subsection 17(3)(a) of the RAF Act so that a plaintiff should not be entitled to pre-judgment mora interest on general damages until the day a court issues judgment. However, in *Kwezi* Henney J confirmed the position as was found in *Vermaak* that the two statutes patently regulate the entitlement to interest at different times. Section 2A of PRIA regulates pre-judgment mora interest on unliquidated debts²⁰ before judgment while the RAF Act only regulates the

²⁰ *RAF v Stoffels* supra par [19]

entitlement to interest to start after 14 days of judgment. It is therefore not possible to find that the two statutes are *pari materia* or is concerned with a similar subject.

[35] As the Supreme Court of Appeal recently found in *RAF v Stoffels*²¹ that since section 2A of PRIA deals with pre-judgment interest on unliquidated claims, the only time the two statutes intersect is after judgment once the court has quantified the unliquidated claim and given judgment, the debt ceases to be unliquidated and becomes a judgment debt within the meaning of s 2(3) of the PRIA. Thereafter, it is section 2 not section 2A that governs the running of interest.

[36] Although there are other obvious difficulties I primarily dismiss the argument on a procedural basis. The Minister has at no stage pleaded that section 2A of PRIA falls to be construed *in pari materia* with section 17(3)(a) of the RAF Act, or that the limitation applicable to interest claims against the Road Accident Fund must, by interpretive parity, be extended to interest claims against organs of state generally. The argument surfaces for the first time in the Minister's heads of argument.

[37] It is trite that a party is bound by its pleadings. The pleadings define the issues, and the court is not at liberty to decide a case on a basis that falls outside the pleaded issues unless that course is fair to both parties²². While the point appears to have the hallmarks of a point of law in order for it to be raised in argument²³, I am not persuaded that this is such a point. The defendant's argument is a contention that

²¹ Paras [19]–[20]

²² *Imprefed (Pty) Ltd v National Transport Commission* 1993 (3) SA 94 (A) at 107C-H; reaffirmed by the Supreme Court of Appeal in *Minister of Safety and Security v Slabbert* [2009] ZASCA 163 at paragraphs [11] to [12], and by the Constitutional Court in *Molusi v Voges NO* 2016 (3) SA 370 (CC) at paragraphs [27] to [28]

²³ *CUSA v Tao Ying Metal Industries* 2009 (2) SA 204 (CC) at paragraphs [67] to [68]

the RAF Act's statutory limitation should, by interpretive parity, be transposed into PRIA.

[38] That contention rests on a series of premises. Firstly, that the Minister of Correctional Services and the Road Accident Fund stand on a sufficiently similar fiscal footing to warrant identical treatment. Second, that the legislature, in failing to enact a comparable limitation in respect of organs of state generally, fell into an oversight that the courts must remedy. Third, that the practical and policy considerations underpinning section 17(3)(a) of the RAF Act apply with equal force to the Minister in this instance. Had the Minister pleaded the case properly, the plaintiff would have been entitled to traverse those premises and, where appropriate, to lead evidence in respect thereof.

[39] I am accordingly of the view that the RAF Act analogy argument is not properly before me on the pleadings and cannot not be entertained.

The Minister's substantive arguments on the application of section 2A of PRIA

[40] As I have stated earlier the arguments raised by the Minister to impugn the application of s 2A of PRIA certainly has an aura of complexity around them. Although, on a cursory consideration of them I have to express that while they all initially appear attractive, they traverse legal issues that our courts have already pronounced on in one way or another. It is therefore not necessary for me to traverse those issues again in this judgment. To the extent that some of the arguments are such that certain legal clarity is needed this is the not the matter to embark on a journey to provide clarity.

[41] I am, for the reasons that follow, of the view that this one of those cases in which the proper course is for the court to exercise the wide discretion conferred upon it by section 2A(5) of PRIA.

Exercise of discretion in terms of section 2A(5) PRIA

[42] I have set out the legislative framework earlier in this judgment that governs the award of pre-judgment mora interest. Section 2A in its entirety, on a proper reading establishes, in my view, two regimes for the determination of interest on unliquidated debts.

[43] The first, is contained in section 2A(1) to (4). It fixes the rate, being the prescribed rate, the start of the running of interest, being service of demand or summons, and the qualifying conditions, being the reasonable assessability and the future-loss exceptions. The second interest regime is contained in section 2A(5) which is discretionary. It empowers the court, having regard to what is just in the circumstances of the case before it, to determine for itself the question whether interest is to be paid, at what rate, and from what date. These are two equally viable options open to the court. It appears to me that a court is free, from the outset, to elect to dispose of the question of interest under section 2A(5) where it considers that course to be just, without first having to go through the exercise of applying section 2A(1) to (4) and then asking whether the result is so unjust that it must be displaced by exercising its discretion.

[44] Section 2A(5) provides that *"notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a court of law ... may make such order as appears just in respect of the payment of interest on an unliquidated*

debt, the rate at which interest shall be paid, and the date from which interest shall run." The section confers a broad discretion. However, the discretion is not at large. It must be exercised judicially and in accordance with established principle.

[45] The present matter is, on careful reflection, such a case. As I have set out above, when the plaintiff issued summons on 9 December 2004, the question whether the Minister could be held liable in delict for damages arising from a detainee's contraction of tuberculosis was an issue that was not clear as a matter of law. That uncertainty was not resolved until the Constitutional Court delivered the Lee judgment on 11 December 2012. It is common cause that the parties to the present matter, with eminent good sense, agreed to hold the action in abeyance pending the resolution of the Lee case. In those circumstances, the question whether it is just that interest should run on the plaintiff's claim from a date on which the very viability of the claim was, through no fault of either party, an open question of law is one that calls for a different approach.

[46] The Minister, for its part, could not as a practical matter have settled or paid the claim before Lee action was decided, because before Lee it was not at all clear that any liability existed. The plaintiff, for his part, could not realistically have pressed the claim to finality before the Lee action was decided, because to do so would have been to risk losing on the very point that was under consideration by the Courts. To impose pre-judgment mora interest on the Minister for the period between service of summons and the delivery of the Lee judgment, when the existence of the underlying obligation was the subject of legal consideration would in my judgment not be just.

[47] I therefore exercise the discretion conferred by section 2A(5) and order that pre-judgment interest shall run not from the date of service of summons, but from 11 December 2012, being the date upon which the Constitutional Court delivered its judgment in Lee. From that date, the ordinary considerations of pre-judgment mora interest apply. The Minister knew, or ought reasonably to have known, that it was liable. Furthermore, the plaintiff was deprived of compensation that should have been paid.

[48] As to the rate, I see no reason to depart from the prescribed rate of 15.5% per annum that prevailed at 11 December 2012. The rate of 15.5% is the rate that would have applied during 2012. That rate will be the consistent rate to apply until the date of judgment.

[49] I interpose to point out there is disagreement between the parties as to the date on which agreement in respect of the damages amount was reached. The plaintiff's counsel, Mr Abrahams, insisted that acceptance of the offer was communicated on 27 February 2026, while the Minister relies on 2 March 2026 as the date of agreement. The issue is obviously relevant when the date from which interest is to run is considered. However, I find it unnecessary to resolve this disagreement. Neither party contends that the applicable interest rate changed between 27 February 2026 and 2 March 2026. The difference of three days on the interest calculation is immaterial in the context of a dispute about interest exceeding R1 million. For the purposes of the calculation that I will apply, I shall use the date of 2 March 2026, being the date relied on by the Minister, as it is the later date and therefore the more conservative basis for the plaintiff's claim.

[50] For the foregoing reasons, I hold that the plaintiff is entitled to pre-judgment mora interest on the agreed capital amount of R350,000.00 at the rate of 15.5% per annum, running from 11 December 2012 to the date of the parties' agreement on 2 March 2026. This means that the period from 11 December 2012 to 2 March 2026 at a rate of 15.5% per annum on a capital of R350,000.00 the annual interest amount to R717,734.93. The total judgment amount due is therefore R1,067,734.93 (R350,000.00 + R717,734.93).

[51] Post-judgment interest shall accrue on the amount of R1,067,734.93 at the current prescribed rate of 10.25% per annum in terms of section 2 of PRIA until date of payment.

[52] Since the interest component of the judgment amount exceeds the capital amount the question arises whether the *in duplum* rule cape applies. I do not understand the Minister's argument that the *in duplum* rule precludes me from ordering interest in access of the capital amount for pre-judgment mora interest. In any event the legal position is clear, having regard to *Drake Flemmer*²⁴, pre-judgment mora interest in terms of section 2A of PRIA is a statutory entitlement and not '*arrear interest*' in the sense contemplated by the *in duplum* rule. The Court in *Drake Flemmer* endorsed the approach followed in *Ethekwini Municipality*²⁵. I am bound by these authorities. The *in duplum* rule does not apply to pre-judgment mora interest.

²⁴ paras [83]-87

²⁵ *Ethekwini Municipality v Verulam Medicentre (Pty) Ltd* [2006] 3 All SA 325 (SCA)

Costs in respect of the quantum trial

[53] The plaintiff, having succeeded in establishing the defendant's liability and the quantum having been settled seeks an order that the Minister pay his costs for the quantum trial. The plaintiff seeks costs on scale C.

[54] The Minister opposes scale C costs and, in the alternative, submits that adverse costs consequences should follow from the plaintiff's conduct in the period following the merits order of 26 May 2025. The Minister contends that the quantum should have been settled promptly after the merits order but that the plaintiff rather unilaterally resiled from the Rule 37A agreement of 14 May 2025 by seeking to amend the claim to R500,000.00, and that the plaintiff's filing of a new expert report on 11 November 2025 and subsequent interlocutory activity caused unnecessary costs.

[55] The general rule is that the successful party is entitled to costs. The Minister's liability has been established. The plaintiff has substantially succeeded on the interest issue and is entitled to costs. On the question of scale, I am not persuaded that this matter warrants costs on scale C. The matter did not strike me as being one of exceptional complexity or difficulty, although the Minister certainly attempted to create an aura of complexity to the interest issue. I shall accordingly award costs on the party-and-party scale, scale B.

Costs of the Interlocutaries

[56] The Minister made extensive submissions regarding alleged non-compliance with Rule 37A by the plaintiff and the plaintiff's attorney and seeks an adverse costs order in respect of the wasted costs caused by the interlocutory and postponement

applications. The defendant relies on *Hlatshwayo*²⁶ and other judgments to justify it being awarded wasted costs in respect of the interlocutories. The Minister essentially accuse the plaintiff of having frustrated the objective of the judicial case management process in the context of amending its claim amount to R500,000.00 and also introducing a new expert report, after the rule 37A minute did not envisage or anticipate those steps.

[57] I accept that Rule 37A(12)(h) empowers the court to make adverse costs orders where a party has failed to comply with the obligations imposed by the rule or by a case management order. However, the exercise of that power requires a holistic assessment of the conduct of both parties and the interests of justice. In that regard, I note the following. The plaintiff's attempted amendment to R500,000.00 was ultimately abandoned, and the matter settled at R350,000.00. To that extent, there is force in the Minister's complaint that the notice of amendment prolonged the proceedings and generated unnecessary interlocutories.

[58] On the other hand, the Minister was not without responsibility for the delay in the settlement of the quantum amount. The Minister could have made an offer of settlement soon after the Constitutional Court judgment of Lee.

[59] Furthermore, I am not convinced that the interlocutories that ensued was entirely the fault of one particular litigant. Both parties contributed to the interlocutory disputes that ensued.

[60] I am therefore mindful to rather order that each party pays its own costs in respect of the interlocutory and postponement applications that ensued after 14 May 2025.

²⁶ *Road Accident Fund and Others v Hlatshwayo and Others* [2025] 2 All SA 333 (SCA)

Conclusion and order

[61] In the result, the following order is made:

6. The defendant shall pay to the plaintiff pre-judgment mora interest on the amount of R350,000.00 at the rate of 15.5% per annum, calculated from 11 December 2012 to 2 March 2026, in the amount of R717,734.93 (seven hundred and seventeen thousand seven hundred and thirty-four rand and ninety-three cents).
7. The total judgment debt is accordingly the sum of R1,067,734.93 (one million sixty-seven thousand seven hundred and thirty-four rand and ninety-three cents).
8. The amount of R1,067,734.93 shall bear interest at the rate of 10.25% per annum from the date of this order to the date of payment.
9. The defendant shall pay the plaintiff's costs of the quantum trial on the party-and-party scale, scale B.
10. Each party shall bear its own costs of the interlocutory and postponement applications after 14 May 2025.

A black rectangular box redacting the signature of the judge.


A MONTZINGER

Acting Judge of the High Court

Appearances:

Attorneys for plaintiff:

Jonathan Cohen & Associates

Counsel for applicant:

Mr R Abrahams

Attorneys for defendant:

State Attorney, Per: CJ Benkenstein

Counsel for defendant:

Mr. D Pillay